

October 5, 2017



**Talbot County Planning Commission**  
**Final Decision Summary**

Wednesday, September 6, 2017 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

**Attendance:**

Commission Members:

William Boicourt, Chairman (absent)  
John N. Fischer, Jr., Vice Chairman  
Michael Sullivan  
Paul Spies (absent)  
Phillip "Chip" Councill

Staff:

Mary Kay Verdery, Planning Officer  
Miguel Salinas, Assistant Planning Officer  
Brennan Tarleton, Planner I  
Carole Sellman, Recording Secretary

**Call to Order**—Commissioner Fischer called the meeting to order at 9:00 a.m. Commissioner Fischer explained the Commission is normally a five (5) member panel, but today there were only three (3) Commissioners present. The Bylaws state that a minimum of three (3) positive votes are required. If any applicant chooses they can withdraw without penalty and come back at a later date. No applicants withdrew due to lack of full Commission.

**1. Decision Summary Review**—August 2, 2017—The Commission noted the following corrections to the draft decision summary:

- a. Line 189, correct to read: "Commissioner Fischer said there is a 14 foot maintenance road that provides access onto the course and there is open land from that point to the tee box."
- b. Line 206, correct to read: "...singling out the practice range and ignoring everything else on the golf course does not make any sense at all."
- c. Line 265, strike the words "didn't he once live on" and correct so that it reads: "Commissioner Fischer asked if the location of the driving range had not once been a spray irrigation field."
- d. Line 270, correct to read: "Commissioner Fischer asked if he thought the owners of Melanie Drive would be interested in entering into an agreement with the owners of the golf course to allow emergency vehicles to come down that road."
- e. Line 433, correct to read: "Commissioner Fischer asked if there had been any discussion between the County and Mr. Callahan's client regarding parking at the County boat landing."
- f. Line 538, take out the word "applications" and replace with "actions" so that it reads: "Commissioner Fischer asked if there had been any actions in the legislature to push the program."
- g. Line 612, correct to read as follows: "Commissioner Fischer stated that openness and great care are especially important because TDRs can be used to trump zoning and we have worked hard since 1952 to maintain our rural character."

Commissioner Sullivan moved to approve the draft Planning Commission Decision Summary for August 2, 2017, as amended. Commissioner Councill seconded the motion. The motion carried unanimously.

**2. Old Business**—None.

**3. New Business**

- a. Administrative Variance—David N. Van Soest and Judy N. Van Soest, #A-238—27440 Travelers Rest Court, Easton, MD 21601, (map 41, grid 12, parcel 162, Lot 13, zoned Rural Residential)

Mr. Tarleton presented the Staff Report for the applicant's request for an administrative variance to expand a legal non-conforming primary dwelling located entirely within the 100 ft. Shoreline Development Buffer (Buffer) by 115 square feet (sq.ft.) of Gross Floor Area (GFA) or roughly 3.48% of the existing GFA within the Buffer. Lot coverage for the entire site would increase from 15,869 sq.ft. (11.57%) to 15,988 sq.ft. (11.65%) of the 15% maximum allowable lot coverage spelled out in the *Talbot County Code* §190-136. The current structure sits 52.5 feet from Mean High Water (MHW) and the proposed additions at the closest point is 87.5 feet from MHW.

Staff comments:

1. Based on the criteria above, staff believes that the applicants have met the requirements for an administrative variance.

Staff recommendations include:

1. The applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
2. The applicant shall commence construction of the proposed improvements within eighteen (18) months from the date of the Planning Office's 'Notice to Proceed'.
3. The applicant shall mitigate for the disturbance to the shoreline buffer by planting 3 times the disturbance area in the shoreline buffer. A buffer management plan will need to be submitted in conjunction with the building permit application, if applicable.

Mr. Van Soest appeared before the Commission. He stated he hoped the application and descriptive notes were comprehensive enough.

Commissioner Fischer asked for public comments; none were made.

Commissioner Councill moved to recommend to the Planning Officer to approve the administrative variance for David N. and Judy N. Van Soest, 27440 Travelers Rest Court, Easton, MD 21601; provided compliance with staff recommendations occurs. Commissioner Sullivan seconded the motion. The motion carried unanimously.

- b. Administrative Variance—Jeffrey G. Huvelle and Ellen S. Huvelle, #A-239— 25701 Edgeview Road, Royal Oak, MD 21662, (map 40, grid 18, parcel 95, zoned Rural Residential)

Thomas Batchelor of Atelier 11, Ltd. appeared before the Commission and requested that this case be continued until the next month's meeting as the owners were unable to attend the meeting.

- c. Minor Variance—Trippes Creek, LLC, #MV 18—28947 Jennings Road, Easton, MD 21601, (map 42, grid 16, parcel 7, Lot 15, zoned Countryside Preservation), Brett Ewing, Lane Engineering, LLC, Agent.

Mr. Tarleton presented the staff report of the applicant's request for a minor variance for the reduction of setback requirements for a property zoned Countryside Preservation (CP) from 200 ft. lot width requirements to 180 ft. (10% reduction). These proposed reductions will increase the building envelope of the 2-acre lot from 8,500 square feet (sq. ft.) to 14,217 sq. ft. for the purpose of constructing a single family dwelling, a pool, and a detached garage.

Staff comments:

1. The request of the applicant for the 10% relief of the building restriction lines would provide them with an additional 5,700 sq. ft. to the building envelope.
2. The parcel in question is not located within the Critical Area and any impacts on resources such as water quality would be minimal.
3. Based on the criteria above, staff believes that the applicants have met the requirements for a minor variance.

Staff recommendations include:

1. The applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
2. The applicant shall commence construction of the proposed improvements within eighteen (18) months from the date of the Planning Office's 'Notice to Proceed'.

Bill Stagg, Lane Engineering, LLC appeared before the Commission representing Robert Michael, contract purchaser of Lot 15. Mr. Stagg stated this case arose due to an unusual condition which happens occasionally in the County. This

subdivision was designed under the Town Residential (TR) zoning back in 2004-2005. The setbacks and lot width were substantially less than the Countryside Preservation (CP) zoning applicable to the lot today. When someone comes in to build on these lots they are subject to the zoning regulations that are currently in effect. Across the street there are two lots that are unbuildable because of the CP zoning standards. Mr. Stagg stated they cannot get a minor variance for those lots because they are less than 180 feet in width. He said they will have to go to the Board of Appeals and pay those fees to get a variance. There is not another solution other than changing the zoning or a text amendment to change the lot width. Mr. Stagg stated this is a reasonable request; it fixes something that happened that was unintentional.

Commissioner Spies stated this is a textbook case as to why we have a variance process. Mr. Stagg stated he wishes there was more flexibility in the minor variance process.

Ms. Verdery stated a couple of these things may be addressed as we move forward with the Code Update.

Commissioner Fischer stated there was nothing in the notes regarding speaking to the neighbors. Mr. Stagg stated he was not aware of any conversations with the neighbors.

Commissioner Fischer asked for public comments; none were made.

**Commissioner Cuncell moved to recommend the Planning Officer approve the minor variance for Trippes Creek, LLC c/o Bob Michael, for the minimum width requirements for the property at 28947 Jennings Road, Easton, Maryland 21601; provided compliance with staff recommendations occurs. Commissioner Sullivan seconded the motion. The motion carried unanimously.**

- d. Major Site Plan/Waiver—RDC Harbourtowne LLC, c/o Capital Properties #SP583—9784 Martingham Circle, St. Michaels, MD 21663 (map 23, parcel 1, zoned Rural Conservation), Bill Stagg, Lane Engineering, LLC, Agent.

Mr. Tarleton presented the staff report for the major site plan for the renovation of the pool and former clubhouse areas in order to create a pool area, pro shop facility, golf cart storage and bag drop-off area, fire suppression, and related parking for the facilities.

Mr. Tarleton also presented the applicant's request for a parking waiver for relief of §190-122 B.(3) to allow for 3 of the parking bays to contain 11 spaces as opposed to the regulations allowing a maximum 10 spaces per bay.

Staff recommendations include:

1. Address the August 9, 2017 TAC comments from the Departments of Planning & Zoning, Public Works, and Environmental Health; Talbot Soil Conservation District; and the Critical Area Commission.
2. The applicant shall commence construction on the proposed improvements within twelve (12) months from the date of final approval.

Zach Smith of Armistead, Lee, Rust and Wright along with Bill Stagg of Lane Engineering, LLC appeared before the Commission on behalf of RDC Harbourtowne, LLC; the owner and operator of the Harbourtowne Golf Course. Mr. Smith stated this site plan is the progression of a conversation they started with the Commission in April, where they presented a sketch site plan for renovations to the hotel parcel and the parcel called the amenities area where the club house and former pro shop were. The club house and pro shop are to be reconfigured on this parcel, along with the swimming pool, a golf cart storage building and some parking for the resort. He stated the sketch plan is not a typical step in the County's process, but because of the complexity of the project they asked to present it to the staff and the Commission to get some preliminary input prior to preparing the technical plans. The input was received favorably and a special exception was also needed since they were amending a nonconforming use. A favorable recommendation was received from the Planning Commission on the special exception. Mr. Smith stated they went to the Board of Appeals in July and received the Special Exception for the hotel site and the amenity area. He stated today they are before the Commission with the renovations for the amenities area. They are still working on the design for the hotel site and will come back to the Commission at some point with that. Mr. Smith asked Mr. Stagg to walk the Commission through this plan.

Mr. Stagg stated the plan has not changed significantly since the Commission last saw it. There is a proposed pro shop building combined with a pool bath house building located just east of the existing pool, which will be renovated to include a small lap pool within that complex. There is a cart barn storage facility adjacent to the west side of the pool for cart storage, bag storage and caddies. The course proposes to use caddies at golfer's discretion. There is also a fire suppression tank and small pump house structure that is located in the same location as the last plan. Mr. Stagg stated the balance of the site is comprised of approximately 126 parking spaces, stormwater management features and landscape buffers from adjoining property owners. There is a cart path that will access the driving range which originates at the pro shop area. That cart path winds around the western side of the 18<sup>th</sup> hole, the berm framing the 18<sup>th</sup> hole, turns east along Martingham Circle, crosses Martingham circle and goes up to the driving range. There has been significant landscaping added and stormwater management has been detailed. Generally, the site drains through stormwater management features and outfalls into the lake between the No. 18 hole and No. 1 hole. There are two or three other outfalls near the parking lot and the road as well. They are designed to scatter around the development site to break up the stormwater so it goes in

different areas. In the end the stormwater that comes off the site will be adequately treated. Commissioner Fischer asked if the stormwater on the hotel side would also drain into the lake. Mr. Stagg stated it is partially split; some drains to the Miles River and some drains back to the lake with similar concepts. He said these are all landscaped stormwater solutions, micro-bio retentions, trying to stay away from submerged gravel wetlands, there is an uncertain history as to how well they work. Micro-bio retention is a pretty well understood science. They are also managing overflow to protect neighbors from unnecessary drainage onto their property. Mr. Stagg stated they have had correspondence from some of the neighbors. He stated they have responded to them but some issues may not have been resolved yet. They met with the Coopers on the lower end of the site next to the corner of the 18<sup>th</sup> fairway. There is a drainage ditch on their property. Over the years the golf course may or may not have maintained that ditch. We are talking to them about ways to improve and maintain that ditch. The Coopers also want some berm resculpting and berm lowering. We want to see what the architect can do. They are willing to do some things on the berm. The berm will be planted in fescue grass. Mr. Cooper understands what that means. The golf course is committed to keeping the fescue as pure as possible; free of weeds and woody growth. The Coopers had a concern of the golf path as a super highway. Mr. Stagg feels the path will see less and less use over time. The range can accommodate only so many golfers. The traffic inside and outside the berm will be minimal.

Mr. Stagg stated that the Coopers want to see plans and proposals before they are built, as Mr. Cooper is a Turfgrass Agronomist. There is a commitment to work on the berms and give them more of a view. Site planning options for cart barns were discussed with the Lippke's and we pushed the cart barn back to where you see it today. The northern lot, Mr. Lippke would like 13 parking spaces removed close to his lot and replaced with grass. We would like to not do that. His implication that we have more than we need is not correct. The parking on this side is to supplement the parking on the resort side and supplement what was removed on the resort side. We have pushed the parking lot further away from those adjoining properties to increase the buffer. There are two or three layers of landscaping, buffering and stormwater management. To put those spaces in grass pretty much means those spaces will not be used. We just think if the parking spaces are not stabilized they will not be considered parking spaces by the County. We have looked at grass/crete pavers or similar where grass will come up, but believe the grass or turf will not live so you will see concrete pavers with dirt. Commissioner Fischer stated that golfers will park near the road. Mr. Stagg stated that the pro shop where you pick up your cart is all on this side of the road. You will finish up here and either walk across the street or be shuttled across the street.

Commissioner Fischer asked where the grill would be. Mr. Stagg explained the grill room is across the street. Mr. Smith explained that while the parking is adequate, there is not a surplus in parking. All of the parking spaces will be used

on a somewhat routine basis. If you look at the County's ordinance it expects that regular parking spaces be made of a durable surface. It allows for grass or paver blocks for spaces that are intermittent, for special events, Black Friday shopping, that sort of thing. They certainly do not think this is that type of parking. They are afraid that if they did leave them in grass that the surface would become messy and not well kept. Because of the intensity of use, they would prefer to leave them as proposed.

Mr. Stagg stated there was one additional item for the Commission to approve. The code requires that no more than ten parking spaces be contiguous without a break and have a planting island. The plan is consistent with that except across the northern boundary of the parking field. There are thirty-three spaces there which were broken into three groups of eleven spaces each. He requested a waiver of one space. Mr. Stagg felt the landscaping that adjoins the property is an effective treatment and the two islands proposed would not make that much difference.

Commissioner Councell stated he would prefer there were adequate parking rather than see someone park on a side road. He noted there were a number of issues from the Public Works Department. He asked if those items were being dealt with. Mr. Stagg stated there were no deal killer issues there. It is all technically correct. They want refinement of how a couple of the items work and relate to each other. Mr. Mertaugh wanted to make sure we have overflow protection for the larger storms that come through and don't actually get treated. With the cooperation of the Coopers on the south end and some drainage issues that will solve their problems and help the golf course, they are in good shape.

Commissioner Fischer stated he likes how they have had conversations with the families and coordinated with the neighbors. He stated he heard there was some talk about taking down the Leyland Cypress there. Mr. Stagg said yes, the Leyland Cypress were planted by the golf course to screen the previous driving range when it was a spray affluent area to meet MDE requirements. The trees are fifteen to eighteen years old and have a life expectancy of eighteen to twenty years. There are signs of aging and decay in those trees. The Coopers are not fond of the Leyland Cypress trees. They would rather have some other trees and more openness to have views towards the golf course; they will work with them. This will probably improve the drainage. It makes sense to get the trees out now and put new trees back, spaced differently with different species that will survive better in that regime.

Commissioner Fischer asked if the drainage was the water from the tennis courts and pool area. Mr. Stagg said yes, the pool area and tennis courts, and the lower end of the parking area all drained that way, and came south and hit Martingham Circle and turned east and Porters Cove on the west side. We are actually going to divert a lot of that drainage and manage it in stormwater ponds. Mr. Stagg said the berms are there and he is sure the berms contribute some, but there has really been no other change. The finished product will have less drainage coming that way.

329 He stated they want to be good neighbors and Mr. Mertaugh wants to make sure  
330 they are good neighbors. When it is done it should be fine. Commissioner Fischer  
331 mentioned the diagrams he had seen showed a saddle in the berm. Mr. Stagg  
332 stated there is a saddle there now but it is not as low as the Coopers would like it.  
333 The way the berms work, they turn the corner and there is an opening between the  
334 berm, the golfers from the tee and the fairway; the golfers or homeowners would  
335 not be able to see over the lower berm. It is a work in progress and they will be  
336 out there with the guy on the bulldozer to get something better than they have  
337 today.

338  
339 Commissioner Fischer asked for comments from the public.

340  
341 Katie and Vernon Cooper, 98723 Martingham Circle, St. Michaels. Mr. Cooper  
342 stated how pleased they have been with the efforts from Mr. Smith and Mr. Stagg.  
343 Unfortunately they were not able to get together until last Thursday so things are  
344 not finalized. To reiterate on those trees, one tree has been lost and the other is  
345 already dead. This has increased with the building of the berms. There has always  
346 been this ditch here but it appears to be getting wider. Mr. Cooper showed a  
347 picture standing in his front yard and he said the water is fifteen inches deep. He  
348 said, if you could just remove those trees and put in a proper functioning drainage  
349 ditch. He stated he thinks they are on the right path and thanks the gentlemen for  
350 working with them.

351  
352 Mrs. Cooper stated her understanding is that where the ditch is now, will be a  
353 shoulder and the ditch will be on golf course property, make it not come on their  
354 property. There is a very high berm and there is a golfing purpose for that berm.  
355 She stated they have no visual site lines for that berm. What bothers them is the  
356 berm at the rear where they used to have a site line all the way over to Hambleton  
357 Cove. They would like the berm lowered or sculpted or both. They have not heard  
358 if that proposal has been accepted. The Leyland Cypress on both the south side  
359 and the northeast side of the property were put there to screen from affluent being  
360 sprayed onto the driving range. The trees are all near the end of their life span and  
361 failing. One tree came down and fell onto their property. The stump is still there  
362 and overgrown with weeds. Mrs. Cooper stated they have not been able to get the  
363 golf course to do anything about the tree hole and stump. She stated they would  
364 like something else better suited put there. They also heard that they are going to  
365 put tall fescue there, which is going to be 18"-20". Fescue is not limited to 18"-  
366 20"; it will grow four to six feet tall. Mr. Cooper stated actually the plants actually  
367 grow 38" to 48" tall then shoot a 20" seed head. Ms. Cooper stated that unless you  
368 mow it, it is going to be six feet tall, so you will have to think about mowing it.  
369 Mr. Cooper stated it will need to be mowed more often.

370  
371 Mr. Stagg stated that he felt Mr. Cooper's publications were not accurate. The  
372 grass would be mowed at least once annually. The grass itself would be 15"-18"  
373 and there will be seed heads. If it grew well you would be putting on fertilizers  
374 and nutrients and water, which are not what we want.



Commissioner Sullivan asked about the water flow and where it goes when it gets to the street? Mr. Stagg stated there will be some re-grading on the Martingham side.

Commissioner Fischer thanked Mr. Stagg and Mr. Smith for their work with the families.

Shirley Lustek, Quail Hollow. She wanted to address several items. The first is the fescue – they have a serious problem with ticks. Are they going to have to put lots of pesticide to keep it under control? Secondly, the discussion of Leyland Cypress; they are trash trees. They are the cheapest and the fastest growing and that is why people use them. Evergreens trees are far more efficient at carbon dioxide oxygen turnover. During August it has been very wet. She stated she talked to the County about the safety issue due to high berms. She would not want to walk down the road at night, she does not think it is going to be as safe. She stated what really brought her here today is the drainage. She stated she is not an engineer, and not a hydrologist. They had two 800-hundred year storms, one week apart. This is not good drainage, seeing water like this every good rainstorm. She called Chris Westergard to come and look at it. Ms. Lustek stated silt is coming into her back yard. Whoever is telling you it is going well and the extra drainage that is provided is very mistaken. There is more of a mosquito problem. Have they sprayed in Martingham this year?

Commissioner Councill asked if the drainage problems are still being worked on. Mr. Stagg stated that yes, they are still working on the drainage. There is a public works agreement that spells out what needs to be done. The drainage issues will be taken care. It is not happening in a timeframe the neighbors want it to, but it will be done. Commissioner Councill stated he is a farmer and this has been a challenging year. Commissioner Fischer stated that if the owner has a property that is flooded by an adjacent property, they have recourse with the County. Ms. Lustek stated she just does not want to have to go out and spend money and have to tell all this to a lawyer.

Ms. Verdery stated that in response to calls received Planning and Zoning have gone out to the site with Chris Westergard from MDE who has worked with the owners in regard to stormwater management. The silt fence is designed to handle the 100-year storms that we have recently experienced. It is not designed to handle the 800-year storm. It is in place to handle the 100-year storm it is designed to handle. We have had storms that exceeded that level. That does not mean there are not things that need to be done to address the storms that exceed the 100-year storms. Commissioner Fischer stated the berms are going to induce runoff but they are going to be seeded. That will help with the runoff.

Ms. Ellie Bilinski, Hambleton Cove, stated she is well aware that golf course construction has different regulations. She stated her main problem, other than the

loss of their views, is Hambleton Cove. It took eighteen months to get a kayak launch put on their dock. She stated they have watched tons of stuff wash into Hambleton Cove. If you look at Hambleton Cove today it is brown. There are waterfalls after some of these rains. Ms. Bilinski stated she understands that the rains have been heavy this year. The Cove is the color of the Passaic River, it is brown. She said she is real tired of the colored water excuse. We have lived with the dirt and the mess but they are killing our cove. Commissioner Fischer asked if the cove was clear prior to the construction? Ms. Bilinski stated it was clear prior to the construction. After the last couple of storms there are places around Martingham that have this clay in the drainage. She just gets excuses. Commissioner Fischer stated that he believes that in time, when the grasses have grown on those fairways and roughs, it should improve. Construction projects are tough but in a year or so it should end. Ms. Bilinski said that one of their concerns is that previously there were no plans to bring boats in and out of their dock. At the appeals meeting it was mentioned bringing boats in. Ms. Lustek asked if they are going to dredge it? Ms. Bilinski stated they don't let kids or dogs swim in it anymore. Come and look at it. It would break your heart.

Susie Pratt, stated she lives in Quail Hollow on the second fairway, which is famous for its berms. Martingham Circle is where you see people walk, jog, and ride bikes. She is concerned with safety and visibility on the Circle. Are there going to be modifications made to the sculpturing if there are problems with visibility? Commissioner Fischer stated you would need to come to Mike Mertaugh and Mary Kay Verdery if safety issues exist. Commissioner Councill stated that it would be safe to say that public safety is the County's first concern.

Commissioner Fischer thanked the public for their concerns.

Mr. Smith stated he appreciates the neighbors and public comments. They are aware of some of the sediment control issues and the drainage issues. He thought they had been addressed, at least brought into compliance with the regulations. He will pass them along to the client and make sure they are evaluated and handled, functioning properly and in compliance with the law. Mr. Smith stated there was one email he saw where a property owner had communicated with someone at the golf course and the response from his client was "Take care of this now." In terms of safety, that is certainly something that is important to them. They work in good faith with Martingham Utilities Cooperative to evaluate any golf crossing. That is something that Martingham Utilities will review and solicit from the neighbors and work to address safety concerns. The Leyland Cypress that are there today, we are ready to supplement or replace them. Either way, there will be a landscape buffer. As Ms. Cooper said, we are waiting on the golf course designer to improve the golf course drainage. Even if we were not, Mr. Mertaugh would require it. Mr. Stagg has a concept for it, and sharing it with the Coopers seems to be a good solution with them. The one piece we are waiting for final approval is what modifications need to be made to the berms. Clearly there is a commitment to address the situation.

Commissioner Fischer stated the sediment structures fill up from time to time. He requested they be monitored to be sure they are maintained. Mr. Stagg stated that the water now should not get back to those filters. The water is trapped in the basin formed by No. 18 Fairway and No. 1 Fairway, in that lake. They are lowering the lake as much as possible to use the water for the grass. He stated they are going to put the weir up so that in the next big storm they have capacity in the crater to store the water to let the sediment settle out. It is a giant sediment trap. Mr. Westergard has been out there every day.

**Commissioner Sullivan moved to approve the Major Site Plan for RDC Harbourtowne, LLC c/o Capital Properties, 9484 Martingham Circle, St. Michaels, Maryland, for the renovation of the pool and former clubhouse areas, pro shop facility, golf cart storage and bag drop-off area, fire suppression, and related parking for the facilities; with staff recommendations. Commissioner Councill seconded the motion. The motion carried unanimously.**

**Commissioner Sullivan moved to approve the Waiver for parking for RDC Harbourtowne, LLC c/o Capital Properties, 9484 Martingham Circle, St. Michaels, Maryland, to allow for 3 of the parking bays to contain 11 spaces; with staff recommendations. Commissioner Councill seconded the motion. The motion carried unanimously.**

- e. Annexation of property along Brooks Lane to include Habitat for Humanity consisting of 0.793 acres of land into the Town of St. Michaels

Ms. Verdery presented the memorandum outlining Resolution 248 for the annexation into the Town of St. Michaels of Parcel 1688, and portions of Parcels 1679, 1689, 1690, 1691, 1692, 1692A, 1694 and 1695, all fronting on Brooks Lane. The parcels are zoned Town Residential (TR) under County zoning. The Town will annex and rezone all 9 properties to Residential Zone (R-1). State law provides that the Town has exclusive zoning authority over land following its annexation. That authority is limited under Local Government Article and restricts a municipal authority to rezone land for a period of 5 years, if: (1) the municipal zoning permits land uses substantially different from the pre-existing County zoning; or, (2) municipal zoning permits substantially higher densities, exceeding 50%, than permitted under the County zoning. The Planning Commission is being asked whether or not to waive the 5 year restriction.

There are some inconsistencies in the current County zoning maps and the municipal boundary as outlined in the Charter for the Town of St. Michaels. For clarity the boundary will be modified from the Town of St. Michaels Charter line as shown on the Annexation Plan.

The Commission was provided with a list to show what is permitted or not permitted within the R-1 zone. If you look at the density, the density in the County is 4 units per acre and the density of the Town is 6.05 units per acre, which exceeds the 50% threshold. For annexation the County is tasked with reviewing the 5 year rule, to determine whether the proposal is consistent with County zoning or whether the County is willing to waive the zoning requirement.

The questions for your consideration today are:

- (1) Whether the land uses proposed for the annexation are substantially different than the uses permitted under County zoning?
- (2) Whether the development intensity permitted by the Town's zoning would increase development intensity in the annexation area by more than 50%?
- (3) If the answer to either (1) or (2) is yes, the County should evaluate waiving the 5-year rezoning restriction, or maintain those limits on municipal rezoning for the 5-year period or some portion thereof

Staff believes that the uses permitted in the Town's R-1 are not substantially different from the County's TR zone. The increase in development density into the R-1 zone is over 50%. Therefore, the 5-year restriction on rezoning applies.

Although very similar as both TR and R-1 are predominantly residential in nature, the density would vary from the County's zoning in density with a great than 50 percent increase. Therefore, the Council, with the recommendation of the Planning Commission, is asking to approve the application of the Town of St. Michaels R-1 zoning and to expressly waive any restriction related to development and use.

As noted this area includes Brooks Lane. There was a request that a portion of Brooks Lane included in this annexation be brought up to Town road standards. Given the location within a growth boundary as outlined within the Comprehensive Plan, and the limited differences in land uses, staff advocates that the Planning Commission favorably recommend the zoning waiver request to the County Council. Further, to address the road issue and to ensure the Town takes ownership, the Planning Commission should recommend that the Council condition the waiver of the 5-year hold on the Town's acceptance of a deed conveying title of the road to the Town after the road is brought up to the standards specified by the Town in the Annexation Plan; which includes upgrading to current Town specifications and widening to at least 20 feet toward the Habitat parcel.

Commissioner Councell stated the permitted use is not substantially different.

Commissioner Fischer asked for public comments; none were made.

Ms. Verdery also clarified that there needs to be a sewer line installed in that area so Public Works is going to be involved. The County Roads Department has agreed to do what is necessary to bring the road up to Town's standards after the work is completed.

**Commissioner Sullivan recommended the County Council approve the waiver request for the annexation of property along Brooks Lane to include Habitat for Humanity of 0.793 acres of land into the Town of St. Michaels; the Commission recommends that the Council conditions the waiver of the 5-year hold on the acceptance of the deed to the road after the road has been brought up to standards specified by the Town and widen to at least a twenty foot width. Commissioner Councill seconded the motion. The motion carried unanimously.**

f. JD Oliver Annexation into the Town of Easton

Ms. Verdery presented the JD Oliver annexation project. The property consists of two parcels; Parcel 38 fronting on Ocean Gateway is zoned General Commercial (GC) and Parcel 241 is currently zoned Limited Industrial ("LI"). The petitioners have requested that the Town annex and rezone both properties to General Commercial ("CG").

The Planning Commission is being asked to recommend to the County Council whether or not to waive this 5-year restriction.

There was concerns as to whether this annexation would create an enclave. Taking in this land on the east side of Route 50 would not create an enclave as this follows the current town boundary.

The Commission was provided with a list of uses. The LI allows for certain things such as compounding industries and flammable liquid distribution wherein CG provides for homeless shelters, nursing homes, hospitals, restaurants, retail, and some other uses that are inconsistent with one another. Also, in regard to the density, the commercial and industrial zoning districts don't have a residential density. But they have an intensity associated with lot coverage. The maximum site coverage within the County is 25 percent in the LI and the GC, whereas the Town CG has 50 percent.

Staff believes that the uses permitted in the Town's CG zone are substantially different from the County's LI zone and less so, but substantially different, in the GC zone. The increase in development intensity that rezoning to the CG zone allows is greater than 50% in the County's GC and LI zones, as the lot coverage would increase by 100% on both Parcel 38 and 241. Staff believes the 5-year restriction on rezoning applies under this prong of the test as well.

If the 5-year rule applies, the question for the Commission is whether to recommend that the County Council consent or withhold consent to the proposed rezoning to CG.

Some comparisons of the County and Town zonings: the GC under County is moderate intensity, the LI is low intensity manufacturing; whereas the Town's CG is intensive commercial activities.

The Commission should note concurrence with the eastern side of Ocean Gateway (U.S. Route 50) is the municipal boundary and therefore annexation of this adjacent parcel is contiguous and will not create an enclave. To increase awareness and at the request of the Council, the County Manager provided written notification of Town and County Council public hearings to the adjacent property owners.

Staff recommends that the Planning Commission determine that the preconditions for exercise of the 5-year hold exist in this annexation, namely that the Town's proposed CG zoning allows land uses that are substantially different from the existing county zones of GC and LI and permits development intensity greater than 50% of the existing County development intensity.

The Commission shall evaluate their findings and the provisions of "the Five Year Rule" in determining whether the County is willing to waive its zoning requirements and make its recommendation to the County Council.

Brendan Mullaney, McAllister, DeTar, Showalter & Walker LLC, appeared before the Commission on behalf of the applicant, JD Oliver. The two parcels are currently zoned LI and GC, and the Town of Easton is proposing CG after annexation. The applicant is currently operated as a large truck sale, equipment and repair facility. That same use is going to continue after annexation but they want to expand and possibly build a new building on that back parcel. For timing reasons, particularly not having to go through wet season perk testing and not having to allocate sewage disposal areas on these parcels, the applicant has chosen to go through the annexation, pay taxes and get into the Town. That helps with the Priority 1 Growth Area plan for annexation.

Lynn Thomas stated their Planning Commission has reviewed and approved the application and recommended it to their Town Council. Their Town Council has not reviewed it. Their Planning Commission believes it is consistent with their Comprehensive Plan. It is a Priority 1 Growth Area. He stated in many ways this is the area they had in mind when they described Priority 1 Growth Area. The casual observer would believe it is part of Easton.

Ms. Verdery stated this business has come to the County numerous times over the years looking to expand and improve, not to do anything out of character. This is

probably the best option for this property given the restraints of not being served by sewer.

Commissioner Fischer asked for public comments; none were made.

**Commissioner Sullivan recommended to the County Council that for the JD Oliver property annexation they waive the 5-Year hold and allow the Town zoning instead of the County zoning; that this is consistent with the Comprehensive Plan. Commissioner Councill seconded the motion. The motion carried unanimously.**

#### **4. Discussions Items**

#### **5. Staff Matters**

Ms. Verdery stated there was some talk about the Ripple Family/Bellevue property in the past and whether there was any opportunity to purchase an area of that land for parking or park expansion. The property owners are working with a surveyor to determine the boundaries of the parcels and the wetlands. We are still working with them on that possibility.

Commissioner Fischer stated that the family was willing to discuss the issue. Ms. Verdery stated the County has an interest in figuring out how we can address these issues, whether it be making revisions within the boundaries of what we already have or whether it would be appropriate to take on some adjacent lands. We are doing amazing things with the Oxford Park. They finished the trails through the Oxford Park; a conservation park that was created when you enter the Town of Oxford. This may provide a similar type of opportunity to take advantage of the wetlands and beach area and provide opportunity for passive recreation for County residents.

Ms. Verdery stated the Commissioners had been provided a memorandum regarding the Open Meetings Act and some revisions that take place as of October 1st. The primary change is that you cannot go into a closed session unless at least one of the members has been through the training. She stated she believes all of the Commissioners have been through the training so there should not be a problem with the Planning Commission. She wanted them to be aware of the requirement, and to know there is a form to be filled out.

Commissioner Sullivan stated the opening paragraph of the Memorandum said two or more members made a public body. Ms. Verdery said that is what a public body is, that does not mean two or more members cannot get together at a function. She said if you have any questions, let us know or contact Tony's office.

The Maryland Planning Commission Association is meeting at the Tidewater Inn on November 2<sup>nd</sup> and 3<sup>rd</sup>. They are working on an agenda and will be sending that out soon. Tentatively some of the topics include: Sign Ordinances, Ethics and Open Meetings, Solar/Wind Energy and Agricultural and Government Applications. Ms. Verdery stated

692 she has been asked to be a part of the panel for the Solar Energy legislation we recently  
693 adopted.  
694

695 Ms. Verdery stated there is a Joint Meeting this evening with the County Council. We  
696 will go over some of the text amendment changes in Modules 1 and 2. Unfortunately we  
697 are not quite as far along internally as we want to be. The consultant prepared a draft, we  
698 commented on it, but there were also a lot of comments back from the consultant. In the  
699 next couple of weeks we should be able to get Modules 1 and 2 onto our web page and  
700 make that available to the Commission. In our October meeting we are looking to having  
701 our first public hearing of Module 1 and 2 of the text. After the Joint Meeting we hope to  
702 move forward with the Village Boundary Maps. We hope to move those forward so that  
703 we can modify the Village boundaries. We hosted several public meetings associated  
704 with the maps. We hope to modify the village boundaries and as we move forward with  
705 the text and the rezoning, we know what the actual village configuration looks like.  
706

707 Commissioner Fischer stated he was unclear what Module 1 and Module 2 means. Ms.  
708 Verdery explained the Code is broken down into three Sections. Module 1 is Introductory  
709 Provisions, Zoning and Overlay Districts. The second Module talks about Non-  
710 conformities, Administration and Subdivisions. That talks about the site plan process,  
711 minor variances, and Board of Appeals. Commissioner Fischer asked where do things  
712 like Cottage Industry come in? Ms. Verdery stated that is Module 3. Commissioner  
713 Fischer stated the village boundaries were first introduced during the Comprehensive  
714 Plan, then we had the public meetings. Were there any changes to the boundaries based  
715 upon the public meetings? Ms. Verdery stated there were two requests. One was  
716 Claiborne which has two areas of environmentally sensitive land which is owned by the  
717 State which were taken out for environmental reasons. Because it is surrounded by the  
718 village, we did not want it to have the village density.  
719

## 720 **6. WorkSessions**

## 722 **7. Commission Matters**

## 724 **8. Adjournment**—Commissioner Fischer adjourned the meeting at 10:49 a.m. 725 726